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April 9, 2012

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----x Chapter 11 Case No. 05-44481 (RDD)

In re:

DELPHI CORPORATION, et. al.,

Debtors.

:  
:(Jointly Administered)  
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**Re: Expedited Request for Preliminary Injunction to Prohibit  
DPHH from Terminating Salaried Disability Plan  
(Related to Docket # 21680)**

**Enclosures**

- Two paper copies of Motion
- Two paper copies of Certificate of Service
- DVD with
  - Injunction Motion\_16-APR-12.pdf
  - Injunction Motion\_16-APR-12.doc
  - Service\_list\_INJ\_16-apr-12.pdf
  - Service\_list\_INJ\_16-apr-12.doc

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Salaried Retiree of Debtors

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x Chapter 11 Case No. 05-44481 (RDD)

In re:

DELPHI CORPORATION, et. al.,

Debtors.

:(Jointly Administered):

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**Expedited Request for Preliminary Injunction to Prohibit  
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## **I. Jurisdiction**

1. **WHEREAS**, the Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b) (2) (B), (F) and (O).

2. **In regards to 28 U.S.C. § 1334:**

This is a motion that seeks a preliminary injunction, which is related to and in support of the “Vesting Motion<sup>1</sup>.” The Vesting Motion is a matter arising under the bankruptcy code and is a proceeding related to the debtor’s bankruptcy case. The injunction is necessary to protect the proceeding, which seeks to determine that disability benefits are vested.

3. **In regards to 28 U.S.C. § 157(b)(2):**

- (B) The Vesting motion would exempt property from the estate.
- (F) the Vesting Motion proceeding is to determine, or recover preferences.
- (O) The determination of Disability Benefit vesting results in the adjustment of the debtor-creditor relationship.

4. To the extent that there are any issues that are determined to be non-core, the Movant consents to having this court enter final judgment.

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<sup>1</sup> Vesting Motion Regarding Extended Disability Benefits For Salaried Employees And Salaried Retirees – Docket # 21860

5. For the reasons set forth herein, the relief requested is warranted and necessary. In support of the "Request for a Preliminary Injunction", the Movant respectfully represents as follows:

## **II. Injunction Request**

6. This motion is a request for a preliminary injunction that orders DPHH to suspend any action related to the termination of the Extended Disability Program and Supplemental Disability Program for currently disabled Salaried Employees and Salaried Retirees.

## **III. Background**

7. Recently (about February 20, 2012), DPHH (formerly Delphi) sent certified letters to Disabled Retirees and Disable Employees (Disabled Beneficiaries), which informed them that DPHH was discontinuing the Disability Benefit Program<sup>2</sup>. In addition, the letter sought to induce the Disabled Beneficiary to accept a lump sum payment that is approximately 50% of what is due each disabled beneficiary through the end of their disability eligibility, which in most cases continues to the end of the month the beneficiary turns age 66.

8. The letter from DPHH sets the Plan termination date as March 31, 2012 and imposes an acceptance deadline for Disability Beneficiaries of April 9, 2012. However, recently DPHH sent out a letter extending the acceptance deadline to April 21, 2012.

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<sup>2</sup> It should be noted that the Benefit Cancellation Letters were sent while the Recoupment Appeal was under review by the District Court (1:11-cv-08443-PAE). It is perceived by the Movant that the benefit cancellation was, at least in part, an attempt to subvert the appeal process and eliminate the necessary conditions for recoupment.

9. On April 11, 2012, the Movant filed a motion (*Vesting Motion Regarding Extended Disability Benefits For Salaried Employees And Salaried Retirees* – Docket # 21860), which asks the Court to make a determination that Disability Benefits are vested and therefore cannot be terminated.

10. A hearing on the “Vesting Motion” is scheduled for May 24, 2012<sup>3</sup>. Thus, prior to the Vesting Motion hearing and the Court’s determination regarding benefit vesting, the following will occur:

- a. All monthly disability payment to beneficiaries will cease (i.e., no May payment).
- b. Disabled Beneficiaries will lose all disability benefits if they reject the lump sum offer, or
- c. Disabled Beneficiaries will have been forced to involuntarily sign a contract to receive the lump-sum payment, but at the expense of 50% of their expected benefit and at the expense of ceding all related rights regarding those benefits.

#### **IV. Benefit Termination Prior To Hearing Does Irreparable Damage**

11. Termination of Vested Disability Benefits prior to the May 24<sup>th</sup> hearing does irreparable damage to the Movant and other Disabled Beneficiaries.

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<sup>3</sup> At the time that this motion was filed, there was the potential that the Vesting Motion hearing date could be moved into late June 2012. In such case, the Movant request that the injunction be structured to comprehend any extension of the hearing schedule.

- a. Allowing the DPHH Plan termination to proceed without the injunction puts the Movant in a no win situation of signing away his rights, thereby losing standing to argue the Vesting Motion; or losing the possibility of even receiving the lumps sum disability payment. This is the case, since a decision on the Termination Offer is required by April 21, which is over a month before the Vesting Motion hearing.
- b. Termination of the Disability Benefit Plan damages (makes moot) most parts of the pending Recoupment Appeal in the 2<sup>nd</sup> Circuit<sup>4</sup>, since it will remove the potential for recoupment. This is the case, since there will be no future payments and recoupment does not permit an affirmative recovery.  
*( It appears to the Movant that the Disability Plan Termination was designed to eliminate the threat of recoupment and a successful appeal, while reducing, to at least half, the expected financial obligation of DPHH – a win - win financial scenario for DPHH at the expense of the Disabled Beneficiary.)*
- c. Beneficiaries who **don't** accept DPHH's Termination Offer will lose all benefits. As a result, they will suffer unwarranted financial chaos and instability.

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<sup>4</sup> USCA 2<sup>nd</sup> Circuit Case # 12-1242-bk: related cases - District Court Case No. 1:11-cv-08443-PAE. Amended Recoupment Motion - Bankruptcy Case No. 1:05-bk-44481(rdd); Docket # 21566

- d. Beneficiaries who do accept DPHH's Termination Offer will lose 50% of their disability benefits and a permanent (wrongful) loss of rights affected by the non-disclosure agreement.
- e. Elimination of the Disability Plan wrongly terminates or reduces a Vested Benefit.
- f. Elimination of the Disability Plan violates Department Of Labor regulations regarding fiduciary responsibilities of DPHH.
- g. Termination of the Plan creates an administrative quagmire for the orderly restoration of the benefit program after the May 24<sup>th</sup> hearing<sup>3 above</sup>, which will likely require significant retroactive adjustments in payments for either the lump sum accepting beneficiary or the offer rejecting beneficiary.
- h. The Plan termination creates financial disruption and instability for beneficiaries not receiving any May payment.

## **V. Continuation Of Benefit Plan Presents No Harm To DPHH**

12. An injunction that continues the Disability Plan, at least through the May 24<sup>th</sup> hearing<sup>3 above</sup>, does no harm to DPHH. DPHH has apparently allocated 50% of its total benefit obligation to the payment of the Benefit Termination lump sum. Thus, the lump sum (if the Court was to rule that benefits are not vested) could easily be adjusted to account for the May payments.



13. Therefore, in the worse case (where the Vesting Motion fails), DPHH has at most an additional month of administrative expenses. While, if the vesting motion succeeds, there is no administrative impact to DPHH.

14. DPHH has already, for its own reasons, moved the Offer Acceptance Deadline from April 9<sup>th</sup> to April 21<sup>st</sup>. Thereby demonstrating that a short delay in the Plan termination is not critical.

15. Thus, the real harm to the Movant and other Disabled Beneficiaries is far greater than any marginal harm to DPHH.

## **VI. A Preliminary Injunction Will Serve The Public Interest**

16. A preliminary injunction serves the public interest. This is the case, since in addition to preserving the rights and financial interest of the Movant, an injunction would preserve the rights and financial interests for over 300 Disabled Beneficiaries, until a definitive ruling on the Vesting Motion can be made.

## **VII. The Vesting Motion Is Likely To Succeeded On The Merits**

17. The Movant believes that the Vesting Motion will succeed on the merits. The Motion makes substantial and compelling arguments, which are supported by legal precedent. The principal arguments of the Vesting Motion are:

- a. Vesting is granted through the benefit plan language.
- b. Vesting is granted through contract law.

- c. Delphi prior actions demonstrate that it operated with the knowledge that disability benefits are vested benefits.
- d. Vested benefits cannot be retroactively terminated.

### **VIII. Conclusion**

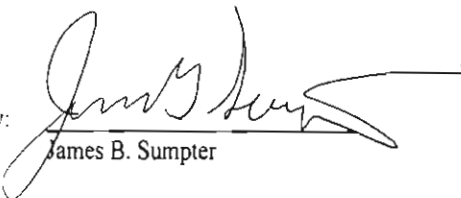
18. Based on the standard articulated by the Hon. Judge Drain during the hearing on the "Request for Stay Proceedings Regarding the VEBA in Lieu of COBRA Ruling (Docket # 21491)" and the concurring opinion by the Supreme Court in Winter v. Natural Resources Defense Council, Inc. (Winter v. NRDC, Inc., 555 U.S. 7 (2008)); the Movant believes that the request for a preliminary injunction to prohibit DPHH from terminating the salaried disability plan should be granted.

WHEREFORE, the Movant respectfully requests that this Court enter an order granting the relief requested herein, and such other and further relief as may be just, necessary and appropriate.

Dated: Noblesville, Indiana  
April 16, 2012

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Salaried Retiree of Debtors

By:   
James B. Sumpter

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----x Chapter 11 Case No. 05-44481 (RDD)

In re:  
DELPHI CORPORATION, et. al.,  
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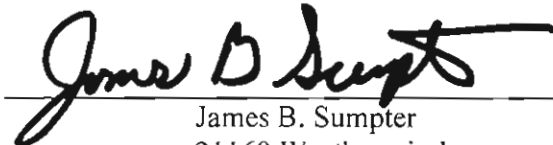
**AFFIDAVIT OF SERVICE**

I, James B. Sumpter, do hereby state that relative to the Motion:

**Expedited Request for Preliminary Injunction to Prohibit  
DPHH from Terminating Salaried Disability Plan  
(Related to Docket # 21680)**

I served copies of the above motion on the entities listed in Exhibit A, via Email and U.S. Mail on 16-APR-2012. Two paper copies were also sent via FED EX overnight to the clerk of the court on 16-APR-2012.

/s/ James B. Sumpter



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**16/APR/2012**

Date

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**Serving Date - April 16, 2012**

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**Serving Date - April 16, 2012**

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